

ORIGINAL

FILED

MAR 25 2014

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United States Bankruptcy Court  
San Jose, California

1 James M. Kelley  
2 14390 Douglass Lane  
Saratoga, CA 95070  
3 jmadisonkelley@gmail.com  
Tel: (408) 402-1915

4 PRO SE

7 UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA – DIVISION 5

9 In Re:  
10 JAMES MADISON KELLEY,

**Adversary. Case No. 10-05245**

11 Debtor

Chapter 11

12 \_\_\_\_\_ Case No. 08-55305 ASW

13 JAMES MADISON KELLEY

14 Plaintiff

15 v.

16 JPMORGAN CHASE BANK, NA,

) NOTICE OF SERVICE  
OF A  
) RULE 45 SUBPOENA TO THE FDIC  
) AS RECEIVER FOR  
) WASHINGTON MUTUAL BANK

17 WASHINGTON MUTUAL BANK,

18 DOES (1-20)

) PROOF OF SERVICE ATTACHED

20 \_\_\_\_\_

) Honorable Arthur S. Weissbrodt  
21 )  
22 )  
23 ) Courtroom: 3020  
24 )  
25 )  
26 )  
27 )  
28 )

Notice of Service of A Rule 45 Subpoena

1

**Adversary Complaint 10-05245**

1  
2                   **NOTICE OF SERVICE OF SUBPOENA**  
3  
4

5                   **Attention:**  
6  
7

8                   Robert Oliver, Esq.  
9                   John Sorich, Esq.  
10                  Christopher Yoo, Esq.  
11                  Thomas Van, Esq.

12                  Alvarado Smith, PC  
13                  1 MacArthur Place, Suite 200  
14                  Santa Ana, CA 92707

15                  This serves as Notice to JPMorgan Chase Bank, NA, that a Rule 45 Subpoena has been  
16                  served on The FDIC as Receiver for Washington Mutual Bank. A copy of the subpoena is  
17                  attached hereto.

18                  March 25, 2014

19                    
20                  James Madison Kelley  
21                  pro per

## Proof of Service

I, James Madison Kelley, am the Plaintiff in this Adversary Case and I affirm that under penalty of perjury that I served the JPMorgan Chase Bank, NA (the Defendant) through its attorneys listed as follows:

Robert Oliver, Esq.  
John Sorich, Esq.  
Christopher Yoo, Esq.  
Thomas Van, Esq.

Alvarado Smith, PC  
1 MacArthur Place, Suite 200  
Santa Ana, CA 92707

with the following document:

RULE 45 Subpoena To The FDIC As Receiver for Washington Mutual Bank

by US Priority Mail on the date below.

#### All other Interested Parties served by PACER

Dated: March 25, 2014

James Madison Kelley  
14390 Douglass Lane  
Saratoga CA 950790  
[jmadisonkelley@gmail.com](mailto:jmadisonkelley@gmail.com)  
(408) 402-1915

## UNITED STATES BANKRUPTCY COURT

Northern

District of

California- Division 6

In re Debtor: James Madison Kelley

SUBPOENA IN A CASE UNDER  
THE BANKRUPTCY CODE

Case No. \* 08-55305 ASW Adv. Case 10-05245

To: Federal Deposit Insurance Corporation,  
as Receiver for Washington Mutual Bank  
Suite 400,  
25 Jessie Street, San Francisco, CA 94105

Chapter \_\_\_\_\_ 11

YOU ARE COMMANDED to appear in the United States Bankruptcy Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

Documents specifying Washington Mutual Bank FA loan # 3018113559 or Washington Mutual Mortgage Securities Corporation Loan # 103446606 (see attachment for that specifically identifies the requested documents.)

PLACE	DATE AND TIME
See Attachment for Instructions	April 24, 2014

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME

Any organization not a party to this proceeding that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Rule 30(b)(6), Federal Rules of Civil Procedure, made applicable in bankruptcy cases and proceedings by Rules 1018, 7030, and 9014, Federal Rules of Bankruptcy Procedure.

ISSUING OFFICER SIGNATURE AND TITLE <i>Christina Tafolla</i> Intake Clerk	DATE <i>MAR 21 2014</i>
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ISSUING OFFICER'S NAME, ADDRESS, AND PHONE NUMBER

*Christina Tafolla, 280 S. First St #3035 SAN Jose, CA 95113 408 278-7500*

\* If the bankruptcy case is pending in a district other than the district in which the subpoena is issued, state the district under the case number.

## PROOF OF SERVICE

<b>SERVED</b>	DATE	PLACE
SERVED ON (PRINT NAME)	MANNER OF SERVICE	
SERVED BY (PRINT NAME)	TITLE	

## DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____	DATE	SIGNATURE OF SERVER
ADDRESS OF SERVER		

Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2007, made applicable in cases under the Bankruptcy Code by Rule 9016, Federal Rules of Bankruptcy Procedure:

## (c) Protecting a Person Subject to a Subpoena.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

## (2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

## (3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party, or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

## (d) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

## (2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and  
(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

## (e) Contempt.

The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

The Receiver as successor in interest to Washington Mutual Bank is commanded to produce the following documents for the period from 7/26/2007 until receivership:

- 1) The Master Servicer Contract(s) between Washington Mutual Bank and Washington Mutual Mortgage Securities Corporation for the years 2007 and 2008.
- 2) The Contract(s) between Washington Mutual Bank and Washington Mutual Asset Acceptance Corporation for the years 2007 and 2008 (until September 26, 2008).
- 3) Documents showing the transactions between Washington Mutual Bank and Washington Mutual Mortgage Securities.
- 4) Documents that show that the Washington Mutual Bank FA loan # 3018113559 was in a portfolio pool (until September 26, 2008).
- 5) Documents that show that the Washington Mutual Bank FA loan # 3018113559 was in a trust.
- 6) Documents that show that the Washington Mutual Bank FA loan # 3018113559 was sold to any person(s) or entity(s).
- 7) Documents that show that the Washington Mutual Bank FA loan # 3018113559 was pledged to any person(s) or entity(s).
- 8) The source of the loss of \$436,503.26 reported in Exhibit C of Receiver's lawsuit against LSI Appraisal. Case # 11-cv-00706-JST-MLG, dkt #165, Filed 5/9/2011 in US District Ct. for the Central District of California. Exhibit C is attached.
- 9) Documents identifying the payor of the loss payment in 8 and to whom the loss payment was made.
- 10) Documents showing precisely when Washington Mutual Bank FA loan # 3018113559 was pledged and subsequently removed from pledge to the Federal Home Loan Bank of San Francisco.

Please deliver the documents on a memory stick or a CD to the following address:

Dr. James M. Kelley  
14390 Douglass Lane  
Saratoga, California 95070  
[jmadisonkelley@gmail.com](mailto:jmadisonkelley@gmail.com)  
408 402-1915

3013904275	\$2,150,000.00/ \$250,000.00	\$975,153.59	7/16/2007	78 BARKERS POINT RD	PORT WASHINGTON	NY	Jean Rutherford
3014057230	\$1,875,000.00	\$564,940.46	7/16/2007	10 VINTAGE RIDGE DR	LAS VEGAS	NV	Thomas Mirkovich
3014068674	\$1,345,000.00	\$536,482.55	7/17/2007	11375 DONA LISA DR	LOS ANGELES	CA	Robert Rodriguez
3017989991	\$1,040,000.00/ \$129,900.00	\$618,554.77	7/18/2007	140 SPANISH MARSH DR	ST AUGUSTINE	FL	Jana Lichtenwalter
3014098135	\$1,400,000.00	\$921,594.54	7/18/2007	6257 BRAINFORD DR	WEST BLOOMFIELD	MI	James L. Vaquez
3014116671	\$2,400,000.00	\$989,105.13	7/24/2007	576 NEAPOLITAN LN	NAPLES	FL	Kathleen Coar
3014203073	\$1,500,000.00/ \$299,900.00	\$873,325.58	7/25/2007	36011 CALLE DE LOBO	MORRIETTA	CA	Kimberly J. Mandell
775719784	\$2,400,000.00/ \$479,680.00	\$679,680.00	7/27/2007	768 ROZZETTI LANE	HENDERSON	NV	Eugenija Mueller
3014149425	\$2,350,000.00	\$1,029,552.31	7/27/2007	24059 N 113TH WAY	SCOTTSDALE	AZ	Rodney R Smith
3018027676	\$452,000.00/ \$56,400.00	\$271,422.17	7/27/2007	26885 WINTER PARK PL.	MORENO VALLEY	CA	Joseph Wong
3018119762	\$479,000.00	\$819,209.33	7/27/2007	1062 LOWRY RANCH	CORONA	CA	Jason D. Stout
3018161913	\$1,040,000.00	\$435,286.50	7/27/2007	144 SPANISH MARSH DR	SANT AUGUSTINE	FL	Jana Lichtenwalter
3018118566	\$1,200,000.00	\$414,374.04	7/27/2007	101 KING SAGO CT	PONTE VEDRA BEACH	FL	Jana Lichtenwalter
3018142426	\$6,750,000.00	\$898,738.99	7/27/2007	5860 HARSCRABBLE CIRCLE	MINNETRISTA	MN	John Bader
3017949763	\$1,715,000.00	\$905,183.04	7/27/2007	183 OCEAN VIEW DR	KEY LARGO	FL	Mark J. MacLaughlin
688457059	\$500,000.00	\$500,980.48	7/27/2007	10 HIDDEN PASS	NEWPORT COAST	CA	Sara Martin
3014274884	\$2,720,000.00	\$1,948,111.06	7/30/2007	12040 LANDOVER LN	FISHERS	IN	Judith Hunter
3017437710	\$900,000.00	\$461,596.20	7/30/2007	1057 and 1059 E Main St	SIMI VALLEY	CA	Jeffrey L. DeBrueler
3014076230	\$1,436,850.00	\$438,640.29	7/30/2007	511 WINDWARD PASSAGE	CLEARWATER BEACH	FL	Sherry Carlson
3013989003	\$1,190,000.00/ \$255,000.00	\$627,724.91	7/31/2007	2582 SYCAMORE VILLAGE	APACHE JUNCTION	AZ	Steven T. Cody
3013849918	\$2,625,000.00	\$911,067.70	7/31/2007	211 ARI WAY	MIAMI BEACH	FL	A.A. Little
3018113559	\$2,992,265.00	\$436,503.26	7/31/2007	14290 DOUGLASS LN	SARATOGA	CA	Tommy Trout
7302500116	\$635,500.00	\$635,492.55	8/3/2007	1010- 1010 1/2 S WASHBURN	CORONA	CA	Roland Lazaro
3014148559	\$1,350,000.00	\$842,809.45	8/3/2007	4444 ALTON RD	MIAMI BEACH	FL	Rodriguez
7678058356	\$500,000.00	\$503,416.60	8/8/2007	895 BAJA STREET	Laguna Beach	CA	Nelson A. Ruiz
3014260164	\$2,025,000.00	\$662,748.16	8/10/2007	1725 CASTELLANA RD	LA JOLLA	CA	Craig M. Bellinger
3016282784	\$2,480,000.00	\$452,319.85	8/10/2007	19201 BRIARFIELD WAY	TARZANA	CA	Stephanie M. Schulze
3018153332	\$880,000.00/ \$107,900.00	\$280,430.16	8/13/2007	10601 VIA MILANO DR	FORT MYERS	FL	Jan M Brownell
3014016434	\$1,347,500.00	\$496,044.09	8/13/2007	1738 HERON RIDGE DR	BLOOMFIELD HILLS	MI	Armen Khobdayan
3016248934	\$960,000.00	\$448,917.95	8/13/2007	2969 VALLEY ST	CARLSBAD	CA	Ashley Law McCann
3014227940	\$1,450,000.00	\$378,680.54	8/14/2007	5683 BRAINFORD DR	WEST BLOOMFIELD	MI	Jay A. Whitham
3011838509	\$3,700,000.00	\$1,564,353.28	8/15/2007	4720 RIVERVIEW BLVD	BRADENTON	FL	Kathleen A. Alan